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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd March 2009

No. 2260—li/1(B)-181/1993(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th February 2009 in Industrial Dispute Case No. 80 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Khurda Central Co-operative Bank Limited, Khurda and its workman Shri Melachha Pradhan was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 80 OF 2008

Dated the 13th February 2009

Present :

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Secretary, .. First Party—Management
Khurda Central Co-operative
Bank Limited, Khurda.

And

Shri Melachha Pradhan, .. Second Party—Workman
At Podadiha, Post Podadiha,
Dist. Khurda.

Appearances :

For the First Party—Management	..	Shri B. C. Bastia, Advocate
For the Second Party—Workman	..	Shri S. N. Dwibedi, Advocate

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 11340—li/1(B)-101/1993-L.E., dated the 25th August 1995, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008 :—

“Whether the termination of services of Shri Melachha Pradhan, Cadre Secretary by the Secretary, Khurda Central Co-operative Bank, Khurda with effect from the 14th February 1990 is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second party (hereinafter referred to as the ‘workman’) in brief is that he was working as a permanent Cadre Secretary under the Khurda Central Co-operative Bank Limited (hereinafter referred to as the ‘Management’) since the 8th February 1977 and his services were regulated as per the Cadre Secretary Rules. It is pleaded that considering the efficiency of the workman he was being transferred from one branch to another and in 1987 he was transferred to Begunia Service Co-operative Society where he worked till the 19th August 1987. It is alleged that on the said date, i.e. on the 19th August 1987 the management placed him under suspension and subsequently drawnup a proceeding against him on the 15th October 1987. It is stated that though the suspension order was served on him on the 19th August 1987 it was given retrospective effect from the 14th August 1987, which is illegal. It is further stated that without furnishing him the copy of the relevant documents basing on which the charges were framed he was asked to submit his explanation and in spite of his request the place of enquiry was fixed at Kalikaprasad even though the headquarter of the workman was fixed at Begunia. It is the specific case of the workman that the Enquiry Officer conducted the enquiry violating the principles of natural justice and so also the disciplinary authority without furnishing him a copy of the enquiry report and the second show cause inflicted on him the punishment of dismissal from service with effect from the 14th February 1990 which is neither legal nor justified. Lastly it is stated in the claim statement that since from the date of his dismissal the workman is not gainfully employed elsewhere, the reference may be answered in his favour by granting him the relief of reinstatement in service with full back wages.

3. The management of the Bank filed its written statement pleading therein *inter alia* that as the workman was found to have misappropriated a huge amount of funds of the Kalikaprasad, Podadiha and Badapokharia Service Co-operative Societies he was placed under suspension and was asked to deposit Rs. 99,375.48 paise and on his failure to deposit the same a proceeding was drawnup against him and after conducting due enquiry into the charges levelled against him, he was discharged from service with effect from the 14th February 1990 as per the Resolution of the Cadre Sub-Committee. As regards payment of

subsistence allowance to the workman, it is stated that although the workman was allowed to be paid subsistence allowance but for his failure to produce 'No Engagement Certificate', the same could not be availed by him. It is stated that the enquiry into the charges against the workman was conducted in a fair and proper manner by affording all reasonable opportunities to the workman in his defence and therefore, infraction of the principles of natural justice, as pleaded by the workman is not at all true. In the aforesaid premises the management while pleading its action to be legal and justified, has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) "Whether the termination of service of Shri Melachha Pradhan, Cadre Secretary by the Secretary, Khurda Central Co-operative Bank, Khurda with effect from the 14th February 1990 is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?"

5. In order to prove their respective stand, both parties have adduced oral as well as documentary evidence in the case. The workman while examined two witnesses including himself and proved four documents, which have been marked Exts. 1 to 4, the management examined one witness on its behalf and proved documents which have been marked Exts. A to T.

6. As both the parties have laid much emphasis on the question of fairness of the domestic enquiry conducts against the workman basing on the alleged misconduct, it is first to be seen as to whether the same was conducted in a fair and proper manner as claimed by the management or there has been infraction of the principles of natural justice and violation of the Statutory law while conduct the enquiry, as alleged by the workman.

7. The workman in his evidence in-chief at Para. 7 has stated that there was no enquiry against him relating to any charges which is not at all correct in view his specific admission in Ext. C, a copy of his representation addressed to the management, that he was well aware about the enquiry and the appointment of the Enquiry Officer to in connection with the proceeding initiated against him. Exts. N and P disclose that the workman despite intimation did not furnish his show cause for which the enquiry was held *ex parte*. So, the allegation of the workman that without giving him any intimation the enquiry was conducted has no legs to stand. It is next contended on behalf of the workman that the authority had not paid subsistence allowance to the workman during the period he remained under suspension. The management seems to have not adduced any evidence on the point and remained content by pleading that since non-engagement certificate was not produced by the workman, which is a pre-condition for grant of subsistence allowance, he cannot agitate the same to be an infraction of the principles of natural justice. But in absence of any oral or documentary evidence to substantiate the stand of the management it can be held that subsistence allowance was not paid to the workman during the period he remained under suspension and the same is a breach of the principles of natural justice. In this connection, the decision reported in 2000 (87) FLR, Page-1 (S.C.) (Jagadamba Prasad Vs. State of U.P.) may be referred to wherein Their

Lordships have held that "payment of subsistence allowance in accordance with the rules to an employee under suspension is not a bounty, it is a right". To the same effect there is another decision of the Hon'ble Supreme Court, reported in 2003 Lab. I. C., Page-2280 (State of Punjab and others Vrs. K. K. Sharma) wherein Their Lordships have held that "non-payment of subsistence allowance during suspension tantamounts to denial of reasonable opportunity".

8. Apart from the above, the charge sheet Ext. A reveals that the workman was proceeded against for misappropriation of different society's money which besides being serious is a grave misconduct on the part of an employee and the management ought to have taken all possible attempts to get it proved through cogent evidence by affording all reasonable opportunities to the workman to defend himself in a duly constituted enquiry. But in the instant case as it appears the Enquiry Officer despite the fact that the workman had insisted for holding the enquiry at Begunia neither held the enquiry at the requested place nor disposed of the application by any reasoned order as to why he did not accede to the prayer of the workman. Besides, the enquiry report copy of which is marked as Ext. S does not speak the reason of the Enquiry Officer's arriving the conclusion against the charges. It only reveals that on his personal verification of the records of different societies he could come to the conclusion that the workman is liable for the charges of misappropriation. A domestic enquiry is a quasi-judicial in nature and since it involves the bread and butter of a person it is expected that the same should be conducted in a fair and proper manner notwithstanding the fact that the workman participated in the enquiry or not. But, in the case in hand the report of the Enquiry Officer is clearly suggestive of the fact that the same was conducted in a hot-haste, in as much as, no evidence is forthcoming as to if the Enquiry Officer had maintained the day-to-day proceedings of the enquiry and if any Marshalling Officer was appointed on behalf of the Organisation concerned, who furnished the documents in the enquiry for appraisal by the Enquiry Officer and further a copy of the list of such documents was furnished to the workman intimating that the same were to be considered in the enquiry in connection with the charges levelled against him. Furthermore, for the reasons best known to the management the Enquiry Officer who conducted the enquiry into the charges has not been examined in the case and the sole witness examined for the management has deposed that he has no direct knowledge about the enquiry and his statements are based on official records. Had the management examined the enquiry officer, he would have enlightened many things in the matter of conducting enquiry against the workman. Non-examination of such a vital witness therefore casts shadow on the fairness and propriety of the enquiry. Besides the aforesaid lapses, the charge sheet, Ext. A while discloses that the workman was specifically held responsible for misappropriation of Rs. 42,183.14 paise, the enquiry report, Ext. S reveals that he was held liable for Rs. 90,637.37 paise, from which an inference can be drawn that the Enquiry Officer had taken into consideration extraneous matters without concentrating his finding with regard to the charge, Ext. A. On the face of these infirmities, therefore, it cannot be said that the enquiry conducted against the workman was either fair or proper.

9. It was further contended on behalf of the workman that on conclusion of enquiry, a copy of the enquiry report was not furnished to the workman in order to enable him to submit his written reply in his defence. In this connection, the learned counsel drew my attention to the decision of the Hon'ble Apex Court, reported in 1994 (I) LLJ (S.C.), Page-162 (M.D., ECIL, Hyderabad Vrs. B. Karunakar). In the context it is seen that the punishment of discharge was imposed on the workman with effect from the 14th February 1990 as per Ext. 4 and therefore,

as held by Their Lordships in the aforesaid decision that the law laid down in the Ramzan Khan's case would operate prospectively, i.e. after November 20, 1990, no prejudice can be said to have been caused to the workman for non-receipt of a copy of the enquiry report from the management.

10. Now coming to the role of the disciplinary authority, who imposed the punishment on the workman, it is found that the disciplinary authority has also not acted fairly while dealing with the matter, in as much as, without applying independent mind to the proceeding, the authority relied upon the findings of the Enquiry Officer and inflicted punishment of discharge on the workman retrospectively with effect from the 14th February 1990. In this connection, the observation of the Kerala High Court in the case between C. I. Poulose Vrs. President, Pindiman Service Co-operative Bank Limited, reported in 1996 Lab. I. C., Page-2029 may be seen, wherein Their Lordships have held that "order of punishment cannot be imposed retrospectively." Another decision of the Hon'ble Apex Court, reported in 1986(52) FLR (S.C.), Page-487 (Anil Kumar Mohan Vrs. Labour Court) in the context may also be seen, wherein Their Lordships have held that "where a disciplinary enquiry affects the livelihood and is likely to cast stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence". It was held therein that if the enquiry is found to be defective one, the imposition of punishment basing on the report of such enquiry cannot be sustained in the eye of law. The instant case being akin to the Anil Kumar Mohan's case (*supra*), it is held that the action of the management in discharging the workman from service with effect from the 14th February 1990 is illegal and so also unjustified.

11. Now coming to the question of relief to which the workman is entitled, in view of the finding arrived at in the foregoing paragraphs, the workman is held entitled to reinstatement in service. He is, however not entitled to any back wages in absence of any evidence on record that during the period, i.e. from the date of discharge till date the workman was not gainfully employed elsewhere. It is made clear that on reinstatement of the workman, the management is at liberty to recover the admitted amount of Rs. 30,000 (as per Ext. D) from the workman from his monthly salary in instalments.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
13-02-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
13-02-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE
Under-Secretary to Government